

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04-CR-2

LEOPOLDO BALDERAS III,

Defendant.

DECISION AND ORDER

Defendant Leopoldo Balderas III moves to correct the judgment pursuant to Fed. R. Crim. P. 36. He states that there is an omission in the judgment in that it does not award him sentence credit from the time of the indictment until the time of sentencing. He asks that the judgment be amended “to reflect the appropriate amount of time the Defendant should have remaining on his sentence to establish the correct release date.” (R. 36 at 4.)

Rule 36 provides: “After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.” The Rule does not allow the court to alter or amend a judgment but rather to correct errors “in the translation from the district court’s original sentence to the formal written commitment order.” United States v. Becker, 36 F.3d 708, 710 n.2 (7th Cir. 1994). An error arising from oversight or omission by the court, rather than through a clerical mistake, is not

within the purview of Rule 36. United States v. Daddino, 5 F.3d 262, 264-65 (7th Cir. 1993).

Defendant has not shown any error in translation of the oral sentence, and a review of the sentencing transcript reveals none. I ordered that defendant's sentence run concurrent with a state sentence he was then serving, but I did not order any "credit" or adjust the sentence to allow credit for the discharged portion of the state sentence. (See 8/9/04 Sen. Tr. at 15.) Moreover, the court does not award sentence "credit." That authority rests exclusively with the BOP. See 18 U.S.C. § 3585(b); United States v. McGee, 60 F.3d 1266, 1272 (7th Cir. 1995) (citing United States v. Wilson, 503 U.S. 329, 334 (1992)).

THEREFORE, IT IS ORDERED that defendant's Rule 36 motion (Docket # 36) is **DENIED**.

Dated at Milwaukee, Wisconsin this 3rd day of June, 2005.

/s Lynn Adelman

LYNN ADELMAN
District Judge